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GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**MINUTES
MAUI/LANA'I ISLAND BURIAL COUNCIL MEETING**

DATE: THURSDAY, November 17, 2005
TIME: 9:00 A.M.
PLACE: COUNTY OF MAUI
PLANNING DEPARTMENT
KAULANA PAKU'I BUILDING 1ST FLOOR
250 S. HIGH STREET
WAILUKU, HI 96793

ATTENDANCE:

Members:	Charles Maxwell, Chair Dana Hall, Vice-Chair Leslie Kuloloio Keeaumoku Kapu Pua Paoa Edward Kaahui Scott Fisher Mei Lee Wong	
Absent:	Kema Kanakaole William Frampton Vince Kanemoto, Deputy Attorney General	(excused) (excused) (excused)
Staff:	Kawika Farm, Clerk Stenographer Melissa Kirkendall, Maui / Lanai Archaeologist	
Guest:	Mike Dega Moki Ryan Dee Dillon Livit Callentine Lisa Rotunno-Hazuka	Wayne Hikiji Clifford Naeole Uilani Kapu Heidi Bigelow

I. OPENING REMARKS

Maui / Lanai Islands Burial Council (MLIBC) Chair, Charles Maxwell calls the-meeting to order at 9:16 a.m. A quorum was met and council members Scott Fisher,

Leslie Kuloloio, Dana Hall, Mei Lee Wong, Edward Kaahui and Keeaumoku Kapu identified themselves. Maxwell called on Kuloloio to give the *pule wehe*.

II. APPROVAL OF MEETING MINUTES

September 29, 2005

Hall said on page 15 in the last paragraph of the Victor Campos agenda item, the portion that read "Dega said a reburial was done for the first site found during the inventory survey. Dega said the reburial was marked and surrounded by orange construction fence and had a buffer zone of about 14-17 feet." Hall clarified that there was an in situ portion of the burial which was encountered during inventory survey. Hall said what was reburied were the disturbed skeletal elements that had been collected. Hall said the area was an original burial site with reburied elements. Hall said on page 20 in the first paragraph of the Hawaiian Cement agenda item, the sentence that read "Hall said neither SHPD nor the MLIBC had given permission to A&B (Alexander and Baldwin) or HC (Hawaiian Cement) to relocate or remove any of the burials from the project area." Hall said that was an incorrect statement because a few burials were relocated. Hall mentioned the majority of the burials had been kept in situ and mentioned a preservation and mitigation plan for all of the burials was still pending.

Wong moved and Kuloloio seconded, "that the Maui / Lanai Islands Burial Council approve the September 29, 2005 meeting minutes as clarified."

VOTE: ALL IN FAVOR. The motion carried unanimously.

Hall asked if it was okay with the council to switch agenda items E and F so that agenda item F would be discussed first. Hall said item F serves as a background for item E.

Kuloloio moved and Hall seconded, "that agenda items E and F be switched so item F would be discussed first."

VOTE: ALL IN FAVOR. The motion carried unanimously.

III. BUSINESS

- A. REQUEST FOR RIGHT-OF-ENTRY PERMIT FOR FIREWORKS DISPLAY AT FLEMING BEACH ADJACENT TO THE HONOKAHUA BURIAL SITE, LAHAINA DISTRICT, ISLAND OF MAUI, TMK: 4-2-4:15 & 16**
Information / Recommendation: Consultation with DLNR Maui District Land Office on request for right of entry permit.

Clifford Naeole a cultural advisor for the Ritz Carlton at Kapalua identified himself. Wayne Hikiji of Envision Entertainment identified himself. Hall asked if Daniel Ornellas or someone from the Department of Land and Natural Resources (DLNR) was present to discuss the current agenda item. Hall asked SHPD staff Kawika

Farm if Ornellas knew the current agenda item would be discussed and if Ornellas was waiting for action by the council to which Farm answered yes. Hall asked Farm to contact Maui's Land Division to inform them that the current agenda item was up for discussion.

Naeole said he and Hikiji were basically present to discuss any concerns the council had about the use of Fleming Beach which was adjacent to Honokahua. Naeole said a Right-of-Entry permit was applied for by Envision Entertainment (EE) and raised some concerns with Ornellas. Naeole thought Ornellas may have originally been under the impression that the actual Honokahua burial site was being used as the place to launch fireworks. Maxwell asked Naeole to explain to the council the fireworks issue. Naeole said Fleming was used not more than 3 times a year as the launching area for fireworks displays. Naeole said a fireworks show was usually done at the request of certain groups. Naeole said the Ritz would contract EE for a fireworks show and EE would then apply for a right-of-entry permit to use Fleming Beach. Naeole said if a person was standing on the beach at Fleming facing the ocean, Honokahua would be to the left of Fleming Beach.

Maxwell asked if Ornella's concerns were known. Hall thought Ornellas just wanted to be sure there would not be any adverse affect on the burial sites. Hall said Naeole was just explaining how Ornellas originally thought the staging area was on the burial site itself. Hall said the staging was done on the beach. Maxwell asked Naeole what side the wind blew from. Naeole said if you facing the ocean on Fleming Beach with the Honokahua burial site to the left, the wind usually blows offshore down the beach towards the point of the burial site. Hikiji mentioned the fireworks are faced somewhat at a 30° angle north so the fireworks shoot out into the ocean as opposed to shooting straight up. Hikiji also wanted to know what Ornellas concerns were. Hikiji said none of the debris from the fireworks should impact the burial site.

Maxwell asked what type of nights fireworks displays were usually planned for. Hikiji said the nights vary depending on the convention and who was requesting the fireworks. Hikiji said EE did have a curfew from the Fire Department which prevents EE from doing shows past 10:00 p.m. Maxwell was familiar with the wind patterns at Honokahua and asked if the wind blew in from the ocean. Naeole said from what he had seen was the wind blew from right to left. Hikiji for clarification said whenever there was Kona winds that may bring bad weather and onshore winds, EE had an active provision which says whenever there were onshore winds, EE had the right to decide whether or not it was safe enough to do a show. Hikiji said the reason for the provision was because EE had a fallout or impact zone that expands out towards the ocean. Hikiji said once the impact zone changes due to a shift in the winds so that there may be possible impact to the land or any part of the hotel or the beach house, mentioned EE would usually decide against doing a fireworks show. Maxwell asked how often the fireworks display occurs. Hikiji said about three times a year, but that every year depends on the volume of requests. Hikiji said for 2006 he would estimate about three shows would be done.

Kuloloio said this was the first time he had heard about fireworks being displayed near one of Hawaii's most significant burial sites. Kuloloio was surprised that the current issue had never been discussed before. Kuloloio was concerned about the number of applicants requesting firework displays may exceed three shows in any given year. Kuloloio was unsure as to what sort of permission the council was giving in regards to firework displays. Kuloloio said another concern was establishing the purpose and significance of each event requesting firework displays. Kuloloio was concerned and wanted to know if there would be any type of cultural impact given that fireworks would be exhibited next to a place like Honokahua. Maxwell interjected to give Naeole and Hikiji a chance to respond. In response to Kuloloio's question about the number of people requesting firework displays and who those groups were, Naeole said traditionally it had been groups such as IBM or Lexus or whichever company had incentives for those who have met quotas where they may receive a reward to come to Kapalua. Naeole said EE did not push firework displays as part of a reward or incentive. Naeole said EE liked to be able to do fireworks shows as a possibility, should a show be requested. Naeole viewed the fireworks show as non cultural and thought of the show as being the big finale to a so called job well done. Naeole said fireworks shows were not done for a cultural purpose. Naeole said the firework displays were mostly for meeting incentives and as a celebration.

Kuloloio said Naeole answered his question about whether a fireworks show was done for a cultural purpose or if a show was done just for corporate fun and games. Kuloloio wanted to know if by supporting the issuance of a permit that allows for fireworks shows, would that essentially mean any number of corporations worldwide could have a continuous number of events that may be very hard to control. Kuloloio wanted to know if any of the corporations being discussed were those that may have never contributed to Hawaii's culture. Kuloloio wanted to know the quantity of debris EE expects to litter and impact the environment. Kuloloio clarified that when he says environment, he means Honokahua, the surrounding lands and the ocean. Hall asked Kuloloio if she could add to what he had just said to which the answer was yes. Hall asked if when answering Kuloloio's question, if Naeole and Hikiji could specifically focus on whether or not any debris can or had fallen on the Honokahua burial site.

Naeole addressed the council and said he would never do anything to endanger the Honokahua burial site. Naeole said the day after a fireworks show he walks the Honokahua burial site to see if debris had littered the area. Naeole said in the 13 years he had walked the burial site after a fireworks show, he had only found maybe six pieces of cardboard no bigger than half a letter size sheet of paper. Naeole removed the cardboard over the years and always walked the grounds to make sure no debris had littered the area.

Kuloloio said Honokahua is one of the top, most significant discoveries in Hawaiian history. Kuloloio said the point itself at Honokahua, Makaluapuna Point was very significant because the place itself received the dignity of a respectful, open spaced area. Kuloloio said another reason why the area was significant was because Honokahua was protected with perimeters that helped to enhance tourists and

visitors understanding about the sacredness of the area. Kuloloio said Makaluapuna Point was recognized as a place where the *kupunas* buried at Honokahua could also *lele* from the point similar to that of Kekaa. Kuloloio said the Hawaiian culture should not be fragmented anymore and Makaluapuna Point must be respected. Kuloloio wanted to be clear that there was an understanding and difference between corporate celebration and cultural spirituality. Kuloloio was very uncomfortable with the issue being discussed because it was the first time he had heard anything about fireworks being exhibited next to a burial site. Kuloloio felt uncomfortable because people saw the spectacles of a firework show, but fail to grasp the respect and importance of Makaluapuna Point which connects to Honokahua. Kuloloio said the ocean near Makaluapuna Point was very important because it was representative of the site itself.

Maxwell said if Arlington Cemetery was the burial site instead of the burials of Honokahua, he asked Hikiji if EE would still launch fireworks next to Arlington Cemetery. Hikiji said he did not know the answer to Maxwell's question. Hikiji said he knew that certainly no firework displays would be allowed on Arlington Cemetery, but as far as launching from lands adjacent to the cemetery, again Hikiji mentioned he did not know the answer to that question. Maxwell said there was federal restriction all around Arlington Cemetery of what could and could not be done in order to protect the solace of the souls that were resting.

Kapu questioned agenda item A on the request for a right-of-entry permit because he wanted to know why DLNR passed the agenda item onto the council when the permit had been previously approved for the past 13 years. Kapu said for his own understanding, he looked up General Provisions under Hawaii's Administrative Rules (HAR) in Chapter 300 to see whether or not the council had the jurisdiction to grant a permit. Hall interjected to say the council was just being asked for recommendations by DLNR's Land Division on the right-of-entry permit for firework displays at Honokahua. Hall felt if the council had any comments, Land Division would take their comments into consideration when issuing the right-of-entry permit.

Naeole addressed Kapu's comment about why after 13 years, the issue of firework displays was coming before the council. Naeole said Ornellas spoke with Hikiji and expressed some concerns because Honokahua was adjacent to where the fireworks would take place. Naeole appreciated Ornellas concerns because at least now someone was thinking about the possible impact a fireworks show may have on an adjacent burial site. Naeole said the right-of-entry permit was approved in the past because the area where the fireworks were launched from was on public use land. Kapu said he was simply trying to find out if the council had any jurisdiction pertaining to entertainment or events that may impact cultural site areas. Kapu said under General Provisions in chapter 1 "the legislature finds that native Hawaiian burial sites are vulnerable and often not afforded the protection of law which assures dignity and freedom from unnecessary disturbance (e.g. Honokahua). Section 13-300-1, HAR."

Hall said the issue being discussed was the first time as mentioned by Naeole that a land agent on Maui had even thought about the possibility that there may be an

affect on the Honokahua burial site. Hall said a lot of the concerns being discussed were up to whichever administrator or entity, responsible for approving certain land use actions or activities. Hall thought it was good that Ornellas was the first land agent who sought input on the agenda item rather than just approving the permit. Hall said it was within the council's scope to make recommendations on any matters relating to burial sites of native Hawaiian ethnicity at least 50 years old or older. Hall said that was why the right-of-entry item was placed on the agenda. Hall said the council would not make a decision on issuing a right-of-entry permit. Hall said the agenda item provided the council with at least the opportunity to be able to make recommendations to the permitting body.

Naeole addressed Kuloloio's question about cultural and corporate awareness and what went on. Naeole assured Kuloloio and every council member present, that Honokahua was stressed on the Ritz's television channel. Naeole said he also offers views and guidance to the guests at the Ritz about understanding Honokahua. Naeole expressed that he was currently doing as much as he could on the cultural side of the issue being discussed. Naeole said as to maintaining a balance between cultural versus corporate, he was trying to maintain the balance as much as possible.

Fisher asked what was the distance from the burial site to where the firing pad or area where the fireworks would be launched from. Hikiji said the launching area was at least a 100 feet away from Honokahua, but said it could be a little further. Hikiji said he had not gone out to measure the exact distance from the burial site to where the fireworks would be launched. Hall asked how far away from the burial site could the launching area be relocated. Hikiji said EE was be more than willing to work towards possibly relocating the launching site. Hikiji said the pyrotechnicians and everyone else involved with the firework display was fully aware of the burial site. Hikiji said the day after the firework show people from EE would go to the beach and spend a few hours cleaning whatever debris may be on the beach as well as any debris that had washed up onshore. Hikiji said EE did stress to those cleaning debris to not walk on the burial site.

Fisher said if you calculate an average of 3 shows a year for 13 years that would total 39 firework shows. Fisher said according to Naeole he had found debris on the burial site at least 6 times. Fisher said if you look at the issue from another perspective of finding debris 6 out of 39 times, it sort of seems that debris may fall on the burial site a little more frequent than previously thought. Hikiji was unsure of the exact quantity of debris that falls onto the burial site. Hikiji was unsure as to exactly how often the wind blew offshore but mentioned if the wind did blow onshore, then EE would most likely not do a fireworks show.

Hall addressed Naeole and said she was fully aware of his efforts on keeping the Honokahua burial site prominent in terms of the profile it had within the hotel area. Hall said the council was lucky to have Naeole's presence out at Honokahua.

(Pua Paoa and Melissa Kirkendall arrive at 9:54 a.m.)

Hall said even though relatively minor debris had fallen on the Honokahua burial site only 6 times over 13 years, that was still unacceptable. Hall said there should not be any debris on the burial site as a result of the fireworks display. Hall suggested the council recommend that if fireworks displays were continued to be held, that at any time there be no debris on the burial site as a result of the displays. Hall was also concerned about the debris falling into the ocean and washing up onshore but mentioned the council had very little control to do anything about that issue. Hall asked Naeole and Hikiji to come back to the council at a future meeting to present some schematics and photographs that would allow the council to view other possible staging areas that could be used to launch fireworks so it would have the least impact on the burial site.

Hikiji said because Fleming Beach was public lands, the area that EE currently uses to launch firework displays was an area that was least used by the general public. Hikiji said to move the staging area more towards the right of Fleming near where the beach house was would intrude on the general public because that was the area the public mostly used. Hikiji said EE was trying to be as unobtrusive as possible and continued to allow people to use the beach while EE would set up for fireworks shows. In regards to debris falling into the ocean, Hikiji admitted that some debris did fall into the ocean. Hikiji said although he did not have the documents with him, Hikiji did mention there had been numerous studies done by EE's parent company monitoring and collecting data about debris. Hikiji said cardboard debris which may land in the ocean did float and if it did wash up onshore, EE would pick it up.

Kuloloio agreed with Hall in requesting Naeole and Hikiji to return at a future MLIBC meeting to further discuss the agenda item. Kuloloio said the council was not seeking to delay the issuance of EE's request for a permit, but simply wanted the opportunity to share cultural views and opinions being it was the first time the current agenda item had been brought before the council. Kuloloio said Honokahua was a special place because the burial site was connected to the ocean. Kuloloio said burials had been found on the sand banks and mentioned the ocean was important because it represents where the *kupunas* came from. Kuloloio said he knew there would be lots of *opala* as a result of firework shows because he had seen the amount of *opala* after a show at the Grand Wailea hotel during 4th of July celebration. Kuloloio said he had seen Grand Wailea staff picking up *opala* after a fireworks show at night and then again the following morning. Kuloloio said the following day lots of debris would have sunk underwater. Kuloloio said what he did not want to see happen, was any *opala* floating or had sunk to touch the sand facing the footprints of Honokahua. Kuloloio said the *kupuna*'s footprints were on the water line and mentioned the *kupunas* came from the ocean.

Maxwell suggested no further exhibition take place until the issue of the current agenda item was resolved. Maxwell said because it was the first time the agenda item was being discussed asked that at the next time Naeole and Hikiji return to an IBC meeting, to present some type of study on the appropriateness of having fireworks shows next to a very sensitive area. Maxwell said he and Kuloloio were emotional about the agenda item being discussed because they both helped to

rebury all the remains at Honokahua. Maxwell mentioned the 13 acres for Honokahua was purchased for 6 million dollars. Maxwell addressed Hikiji and wanted him to think about the point he made earlier, that if Arlington Cemetery was the burial site instead of Honokahua, would fireworks still be launched from the current staging area. Maxwell asked Naeole and Hikiji to come back at another meeting with more culturally directed possibilities.

Naeole said he and Hikiji would address the council's concerns. Naeole asked if DLNR could identify what constitutes as questionable land use for right-of-entry that relates to what people can do on a beach. Naeole said answers to his questions would help to narrow the parameters as to where EE lies with its' request for a right-of-entry permit. Maxwell said currently it was hard to control access and people were going onto to the burial site.

Kapu recommended DLNR come up with a guideline for the council to follow in assisting to clarify what it was the council was considering on the present agenda item. Kapu wanted to know what it was that DLNR was asking of the council pertaining to the agenda item. Kapu said without a guideline from DLNR and specifics on what Land Division wanted, essentially the council could discuss the agenda item for many IBC meetings without ever reaching a conclusion or closure. Kapu wanted DLNR to set up guidelines that would be applicable for all historic places and not just Honokahua. Hall thought the current agenda item was brought before the council simply for the council to share their cultural expertise. Hall inquired about the possibility of relocating the fireworks activity elsewhere at Kapalua and possibly have people look *mauka* instead of *makai*. Naeole said they would definitely look into those possibilities.

Hall moved and Kuloloio seconded, "in the event that any further Right-of-Entry permits are approved for fireworks displays at Fleming Beach, adjacent to the Honokahua burial site, that the permittee assure DLNR that there shall be no debris on the burial site as a result of the activity."

Kuloloio said Makaluapuna Point was the corridor that extends into the land. Kuloloio stressed the importance of protecting Makaluapuna Point because it was an area where the spirits *lele* to go home or return. Wong asked if EE's pyrotechnicians considered launching fireworks from a barge off land. Hikiji said using a barge was a proposal that was looked into but after consideration it was determined not to be a economically feasible idea. Hikiji said EE had always been really sensitive of the burial site and never intended to disturb the burial site in any way. Hikiji said alternative staging areas would be looked into but reminded the council that EE had to keep the public's access in mind being that Fleming was a public beach. Hikiji said there had been complaints from people who did not want fireworks to be launched right in the middle of Fleming which was also tied to safety and hazard issues.

VOTE: ALL IN FAVOR. The motioned carried unanimously.

B. RECENT INADVERTENT BURIAL DISCOVERIES AT VICTOR CAMPOS PROPERTY, WAILUKU AHUPUAA, WAILUKU DISTRICT, ISLAND OF MAUI, TMK: 3-4-039:076

Information / Recommendation: Discussion of inadvertent burial discoveries and mitigation.

Mike Dega of Scientific Consultant Services (SCS) archaeology identified himself and said on October 31 he received a call from Melissa Kirkendall who had informed him that someone had reported an inadvertent burial discovery at the Campos property. Hall interjected to inform Dega that in the fax sent to Sunny Greer on the issue being discussed, Dega failed to mention the name of the person who reported the discovery which was David Metz. Hall said Metz had called her to inform her that he was at the Campos property on October 31 and noticed what appeared to be exposed human remains in the upper dune of the Lao Valley side of the parcel. Hall said the location of the inadvertent burial was in an area where she and Kuloloio had both previously noticed a water worn feature. Hall said she went to the Campos property and saw what she thought were exposed human remains. Hall said she contacted Kirkendall to inform her of the discovery. Hall asked Kirkendall if she too had thought that if what was exposed appeared to be human skeletal remains to which Kirkendall answered yes. Dega thanked Hall for the clarification. Kirkendall said she went to the Campos property and also saw what appeared to be human remains.

Dega said on October 31 people from SCS went to the Campos property and managed to rest a ladder against the face of the dune to climb up to where the suspected burial was. Dega said a fragment from the suspected burial was removed and identified as human. Dega said SCS contacted Kirkendall to inform her that the discovery was in fact human. Dega said on November 10 the Vice-Chair and Kirkendall went with SCS on a site visit at the Campos property to discuss short and long-term preservation measures of the inadvertent burial. Dega said he spoke with the landowner Victor Campos on the same day as the site visit and was informed by Campos that completion of the wall would begin on Monday, November 21.

Hall pointed out that two inadvertent burials were exposed during the current retaining wall project at the Campos property. Hall said the first inadvertent burial was found near the middle of the dune during grading of the dune face. Hall said the second inadvertent burial was found in the upper corner portion of the dune closest to Lao Valley. Hall said because of the height of where the burial was located, it was unknown as to how much of the remains of the second inadvertent were in situ, to which Kirkendall also agreed. Hall said because the dune was graded so steeply with no slope, that was the reason why there is a situation where slumpage occurred exposing a burial. Hall said another reason the burials were exposed was because the retaining wall had not been constructed in a continuous fashion as originally anticipated. Hall cautioned that more of the dune was in danger of slumping out and possibly exposing additional burials.

Maxwell asked what could be done to stabilize the dune to prevent more burials from being exposed. Dega said a couple ideas were thought of. Dega said one idea was

to hurry and complete construction of the retaining wall which was what the landowner was originally supposed to do. Dega said the wall was built in segments but for some reason was not completed. Dega reminded the council that construction of the retaining wall would begin on Monday, November 21. Dega said a second idea was to create some sort of sand ramp to hold portions of the dune in place. Dega said a sand ramp would basically be sand placed next to the vertical dune face that slopes. Dega said the sand ramp would also provide a means of assessing the burial. Dega mentioned that to assess the burial the way it currently was would most likely lead to more of the dune collapsing. Hall said the area that would have backfilled sand for the ramp, already had slumpage and mentioned it was a portion of the dune that was concave. Hall said within the concave area were fissures indicating more of the dune would slump out.

Kuloloio was frustrated with the discovery of the second inadvertent because now there were two burials that were exposed in the dune, one of which had been exposed for a while. Kuloloio called the exposure of the burials cliff hanging because the burials were left in a manner that allowed the elements of Mother Nature to cause erosions and slumpage. Kuloloio heard nothing from SCS or the engineers involved with the current agenda item in addressing what he called site stabilization. Kuloloio would have preferred if SCS came before the council with plans A, B and C of how to stabilize the dune based on years of experience that proved what was being proposed worked. Kuloloio did not like when the council had to decide what may or may not work such as using sand to construct a ramp against the dune face. Kuloloio had worked with 100 foot high sand banks and wanted to know what the angle of grade the proposed sand ramp would be. Kuloloio said based on his own experience and given the area for the proposed sand ramp, he was certain the idea would not work because the sand would need to slope pass where the retaining wall was. Kuloloio did not want to discuss ideas that did not make sense, especially if the ideas being proposed had no track record from an engineering or archaeological perspective. Kuloloio had previously pointed out some *pohakus* where he thought there might be burials and wanted to know why nothing was done then. Kuloloio was frustrated because to assess the burial, all a person needed to do was have a backhoe lift a person up to the elevation of the burial so that work could be conducted. Kuloloio wanted to know why what he had just mentioned, that type of immediate responsive idea was not suggested. Kuloloio was frustrated with the Campos project because of the many delays that had and were still occurring.

Dega said he would not answer any engineering based questions because he was not an engineer. Dega mentioned the sand ramp was an idea from the collective thoughts of him, the Vice-Chair and Kirkendall. Dega suggested an engineer or representative from the Planning Department should help with the project to ensure things were done correctly. Hall told Kuloloio that the sand ramp idea was to help temporarily stabilize the dune face and to provide a way to get to the height of where the exposed remains were so the burial could be better assessed. Dega said the feature was recorded but mentioned there was no *iwi* visible at the time. Kuloloio suggested using binoculars as a temporary means to assess the burial. Dega said the chain of events that occurred was a feature was reported, then there was

erosion which exposed remains. Dega said the feature was recorded then more gravitational erosion occurred where remains fell out and was identified.

Maxwell asked Dega if he understood Kuloloio's and the council's frustration. Maxwell said Kuloloio and the council were frustrated because the project area had been a continuous problem for years. Maxwell remembered Kuloloio suggesting configurations over a year ago that were never followed. Dega told the council that he should not be speaking from an engineering point of view, but mentioned from what he understood the retaining wall was to be built in segments, then the space between the retaining wall and the dune would be backfilled to help protect the burials. Dega said the landowner was waiting for plans that an engineer was designing for a box that would help to protect the first inadvertent burial. Dega expressed that a lot of the council's concerns were beyond his control. Dega said he could continue to press the council's concerns but mentioned he was not the landowner or the engineer. Dega understood the council's frustration.

Kuloloio wanted construction of the wall to recommence tomorrow (Friday, November 18). Kuloloio said the faster the wall was constructed the faster it could serve the purpose of helping to hold the dune in place. Kuloloio said there was not enough space to construct a 2:1 slope to help stabilize the dune. Kuloloio said if the dune collapsed during construction of the retaining wall, he would accept the disturbance because the burial would be behind the wall. Kuloloio felt as long as the burial was behind the wall the open space could be backfilled and the burial would be protected. Kuloloio wanted closure to the Campos project.

Kapu asked if data was still being collected in the project area and if that was the reason why sand was being piled against the dune. Dega said data was not being collected and mentioned the reason for the sand was to temporarily help stabilize the embankment of the dune. Kapu suggested the council make a recommendation to Campos that the retaining wall be completed. Kapu said if SCS was not collecting any data, what was the sense in proposing temporary stabilization measures. Kapu mentioned if more of the dune collapsed, the council would be dealing with heavier issues than what was being dealt with presently. Dega said the backfill was reinforced yesterday (Wednesday, November 16). Kapu asked if there was a lot of construction happening in the area. Dega said the retaining wall was the only construction occurring at the Campos property.

Kapu asked if SHPD had any input. Kirkendall said the forming and footing of the wall did not currently extend all the way to the Lao Valley side of the dune to where the burial was. Kirkendall was concerned with any excavation that would be done for the footing in front of the burial without having some form of immediate stabilization measures in place. Kirkendall suggested completing the portions of the wall that had been built up and reiterated her concern about excavating the footings in front of the burial due to the likeliness of slumpage occurring.

Kuloloio mentioned a lot of the issues being discussed now which revolved around the architectural and engineering designs should have been discussed earlier. Kuloloio said when the council spoke with the engineer (Arakaki), the engineer had

no idea of what the wall would look like. Kuloloio felt what was being discussed should have been put into designs so when the wall was built, one would know exactly how long the wall would take to construct. Kuloloio mentioned the wall could be built in 1 day and was frustrated because the wall was being built sections at a time. Kuloloio expressed that the retaining wall at the Campos property was the worse he had seen and was taking way too long to construct. Kuloloio was upset with all the delays that had been occurring. Kuloloio did not feel comfortable with new stabilization measures because the original measure was not followed. Kuloloio was upset because what was being discussed now were points that he had made a long time ago and was now coming back to haunt him. Kuloloio said he was tired of dealing with the Campos issue and did not want to go to the Campos property anymore.

Kapu wanted to know if scaffolds could be used to help stabilize the area so completion of excavating the footing could be done. Kapu mentioned he had worked in construction for a long time and agreed with Kuloloio that to backfill the area as a temporary means of stabilizing the dune was not a good idea. Kapu also felt the wall needed to be completed as quickly as possible. Dega said he did some work in the engineering field and mentioned the proposal of using sand to temporarily stabilize a vertical sand dune face was a solution that had worked in the past. Dega did say that while using sand to help stabilize the dune was a solution, did admit that the proposal was a controversial issue in mechanical engineering. Kuloloio said SCS and the council should not have to come up with solutions to the problem. Kuloloio said the solutions should come from the engineer because if something happens, the engineer would be liable. Kuloloio wanted the engineer to come back to the next meeting to express his frustration and get answers as to why the wall was not finished. Dega said he could not promise the engineer would show up at the next meeting. Kuloloio wanted the engineer to be present or have the council move to have all construction activities at the Campos property stopped. Kapu was concerned for the burial and mentioned if the engineer did not have any solutions to the problem, then it would be within the council's right to toss out suggestions that could help bring closure to the Campos issue.

Dega said he could talk with the landowner and the engineer until it was known, how long it would take to complete the wall. Dega said he thought the county had gone out to the Campos property to check if the plans for the retaining wall were being followed. Kirkendall acknowledged what Dega had said about the county engineer doing a site inspection but mentioned she did not think it would be worthwhile to have the county engineer participate with helping to solve the Campos issue. Kirkendall thought the county engineer could suggest some ideas for the Campos's engineer. Kirkendall said the council should make a request that the county engineer make recommendations to the engineer in charge of the Campos project.

Kapu wanted to know if the landowner was having problems with acquiring certain permits. Dega said the landowner had the permit for the construction of the retaining wall and mentioned that the landowner would need to come back before the council if applying for additional permits. Maxwell said Victor Campos originally came before the council wanting to construct a 5 story parking garage. Maxwell said

the engineer for Campos came before the council at one time and also mentioned the Campos property was an item that the council had been discussing for a long time. Maxwell said the burial council's mission was to protect burials and wanted to know how the council could mandate the landowner to protect the two inadvertent burials immediately. Hall said the council could not mandate the issue being discussed because SHPD had the jurisdiction to determine the treatment of inadvertent discoveries. Dega mentioned there was a person who was taking pictures of the Campos property because he had seen the person on several occasions snapping photograph while Dega was driving past the Campos property.

Kuloloio said if either of the burials collapsed at any time it would be disastrous. Kuloloio mentioned that regardless if there was any initiative or not by SCS, the State or the contractor, he would point fingers at those who were to blame. Maxwell asked Kuloloio if he was speaking for himself as a burial council member to which Kuloloio said yes. Kuloloio expressed his frustration and suggested Dega *hoomalemale* with the appropriate people to remedy the retaining wall situation or to have the item taken off the agenda because Kuloloio felt it was a waste of time to discuss the same problem over and over without having any action occur. Dega said SCS was trying to remedy the situation. Maxwell told Dega as the Chair of the burial council that SCS was not trying hard enough.

Kapu asked if a recommendation was needed. Maxwell wanted to know what the council should recommend. Kapu felt a motion should be made because the agenda item was up for recommendation and the council was adamant in discussing the Campos issue which at times got emotional for a few council members. Maxwell said he would entertain a motion. Fisher suggested Kapu make a motion to protect the burials by speeding up the process of constructing the retaining wall.

Kapu moved and Fisher seconded, "the Maui / Lanai Islands burial council recommends that the retaining wall construction be completed immediately in order to protect the inadvertent burials."

Kirkendall suggested including in the motion SHPD and the cultural and history branch in particular since it was the department who had the jurisdiction to act on the agenda item being discussed. Kapu wanted a date as to when the wall would be completed. Hall said it was difficult to establish a time limit because it would be arbitrary. Hall said the point was that no further harm should befall the inadvertent burials. Hall asked Kirkendall if she wanted the council to make a recommendation directly to SHPD. Kirkendall felt SHPD should be included in the motion because SHPD had the jurisdiction in the matter and it would hopefully help SHPD to act quickly in protecting the inadvertent burials. Hall asked Fisher if he would consent to withdrawing his second of the motion so it could be restated to which Fisher consented and withdrew his seconded. Hall asked Kapu if he would consent to withdrawing his motion so it could be restated to which Kapu consented and withdrew his motion.

Kapu moved and Fisher seconded, "that the council make a recommendation to the landowner(s), SCS and SHPD including SHPD's culture and history

branch that the retaining wall construction be immediately completed in order to protect the inadvertent burial discoveries and to prevent these human skeletal remains from being dislodged from the sand dune.”

Kuloloio wanted a date included in the motion because motions were made before and the wall still had not been completed. Hall said the council could not give a date of completion because SHPD had the jurisdiction in the matter. Kuloloio wanted to be sure the retaining wall would be completed because that was the most important issue. Kuloloio said given two inadvertent burials were discovered tells him there are more burials in the dune. Kuloloio said if the whole dune collapse before the completion of the wall, then everything would go back to square one.

Pua Paoa wanted to know if the council had power to issue penalties. Paoa mentioned that if the council did have such power, suggested telling the landowner if the retaining wall was not completed immediately then penalties would result. The Chair and Vice-Chair said that was a question for the Deputy Attorney General. Paoa mentioned the motion seemed a little weak because failure to abide to the motion would not result in any consequences. Paoa said if the council could attach penalties that would show the seriousness of the situation. Hall said she did not think SHPD had written any letter about the second inadvertent discovery. Hall thought a letter needed to come from SHPD first in order to consider attaching any penalties.

VOTE: ALL IN FAVOR. The motion carried unanimously.

Fisher wanted to know why the landowner was taking so long to complete the wall. Dega said he did not have an answer to Fisher’s question and that was something the landowner would need to answer himself. Maxwell said the Campos property was an item that had been discussed for years. Kapu wanted to know if the motion covered the completion of the entire retaining wall. Dega said yes the wall would need to be constructed from property line to property line. Kuloloio also wanted to make sure the entire retaining wall would be constructed.

C. BURIAL SITE IDENTIFIED ON LAUNIUPOKO LOT 2, MAHANALUA NUI SUBDIVISION, LAUNIUPOKO AHUPUAA, LAHAINA DISTRICT, ISLAND OF MAUI, TMK: 4-7-01

Information / Recommendation: Discussion of burial site identified during archaeological inventory survey.

David Dillon introduced himself and handed out a map of the project area (only 6 copies). Dillon said the burial site was identified during an inventory survey conducted by SCS in September of 2005. Dillon said the site consisted of three small overhangs. Dillon said feature C was found during excavation in a small narrow space. Dillon said the feature appeared to have been impacted by flood water or something of similar nature and mentioned there was no in situ burial present. Hall asked Dillon to locate the area he was speaking about on the map that was handed out. Dillon identified the area as T82, feature C. Maxwell asked if feature C

was in the stream at Launiupoko. Dillon said the feature was in the side of a very narrow gulley carved into the Launiupoko area.

Kapu asked if feature C was a preservation site. Dillon said there was a reserve site which covered the immediate area and ran into the river. Dillon said a temporary barrier was placed on the property for historical purposes. Hall asked if the human skeletal remains would be preserved in place. In response to what Hall had asked, Dillon said yes and mentioned that was the ideal situation for the burial. Hall asked if there had been discussion with the landowner and if there had, wanted to know what the understanding between SCS and the landowner was. Maxwell asked if the landowner agreed to preserve the burial in place to which Dega answered yes. Dillon said during excavation, it was discovered that the soil in the overhang was very thin and shallow. Dillon thought the wall of the structure which originally stood at the overhang probably was displaced by erosional waters.

Kapu asked for a much more detailed map which showed the river which ran through the area as well as the culverts in the area. Kapu also wanted to know what plans were in store for the area so that the council could make a better recommendation to protect the burial. Kapu wanted to know if there were other sites, particularly burials that were also in the area. Dillon mentioned there had been some culvert work done in the area. Dillon said there were devices to help bring water into the area and mentioned the burial was in the 100 year flood zone. Kuloloio also felt Dillon's map needed more detail and requested more information because he did not know how the council would protect the burial once the landowner started constructing a house. Kuloloio wanted to know how the area would be impacted since other property owners were near the burial. Kuloloio wanted to know if the burial would be damaged by possible run offs, infrastructures, drainage and other construction. Kuloloio reiterated his feelings for a bigger map to show the topography of the area as well as where the proposed subdivisions would be including proposed streets and gullies. Kuloloio said the more information he had would help him to better protect the burial.

Hall mentioned the agenda item being discussed was just an early notification to the council of a burial that was identified during inventory survey. Hall said the agenda item was to give the council the opportunity to know at the earliest possible time a burial exists. Hall said a burial treatment plan (BTP) would be developed for the human skeletal remains identified. Hall mentioned the information requested by Kuloloio should be included within the BTP. Hall asked Dillon if he thought the skeletal remains identified were all the remains of the individual or if work was stopped once the remains were identified. Hall wanted to know what process Dillon went through when the first human remains were identified. Hall asked Dillon if he was at the end of the investigative process and if so what was known. Dillon said standard procedures were used and mentioned a 50 X 50 centimeter test unit was conducted. Dillon said as soon as he discovered and identified human skeletal remains he notified the interested parties. Dillon said the skeletal remains were reinterred back into the hole from which it came from.

Maxwell asked who reinterred the remains to which Dillon said he did. Maxwell asked Dillon if he knew the protocol to reinter remains. Dillon said he did not know the protocol to rebury an individual but mentioned he felt that was the best way to preserve the burial. Maxwell asked Dillon what gave him the right to conduct a reinterment without contacting the burial council first. Dillon said he did not have the right to conduct a reinterment without the council's permission. Kapu wanted to know where SHPD stood on what had just been discussed. Kirkendall said she thought the remains were left where it was found to protect the burial until a decision was made as to whether or not further investigation was needed. Kirkendall mentioned she thought the use of the word reinterred was not the term Dillon meant to use. Kirkendall thought Dillon meant to inform the council that the burial was simply left in place. Kirkendall said SHPD would warrant further investigation if that was what the council wanted.

Kaahui asked Kirkendall if she had been out to the site to which she answered no. Kaahui asked Kirkendall if she was planning on visiting the site to which she answered yes. Kaahui asked to visit the site when Kirkendall did her site inspection. Kapu also asked to be present when the site was visited by Kirkendall and Kaahui. Dega said arrangements would be made sometime early next week (November 21, 22 or 23) depending on people's schedules.

Maxwell said he was uncomfortable with what was being discussed and wanted to know if the burial would be dug up again to reassess and look for all the remains to which Dega answered no. Maxwell asked if all the remains were found. Dega said once the remains were reported in situ, they were covered and were now awaiting a decision by the council on what to do with the burial. Dega said he notified the Vice-Chair and Kirkendall the day the burial was discovered. Maxwell asked why Dillon had not been instructed on how to protect the burial. Dega said the burial was left in situ. Hall asked Dega when was it that she supposedly had been informed about the burial discovery. Dega thought he informed the Vice-Chair on August 15. Hall claimed she was not notified. Dega said a letter was sent to Sunny Greer (SHPD Cultural Program Director) informing her of the discovery with copies sent to the Chair and Vice-Chair of the burial council. Hall said she did not receive a copy of the letter until well after the letter had been sent to Greer. Dega said copies were usually sent the same time as the original letter. Maxwell suggested for future purposes that the burial council be called including the appropriate members and a fax of the discovery be sent so council members would know exactly when a discovery occurred. Dega said what Maxwell had mentioned was common practice for burials. Dega said as to why the Chair and Vice-Chair did not receive a copy of his letter was beyond his knowledge.

Kapu wanted a date on when he, Kaahui and Kirkendall could visit the site. Kapu wanted to know who hired SCS to conduct the archaeological survey to which Dega said the West Maui Land Company. Kapu wanted to know if there would be any problems accessing the site given it was private property. Heidi Bigelow of the West Maui Land Company introduced herself and said she represented the landowner. Kapu asked Bigelow if there would be any problems accessing the property and wanted to know if the property was still under West Maui Land Company or if the

property had been sold to other parties. Bigelow said the property the site was discovered on was still owned by West Maui Land Company. Kuloloio asked Bigelow who she represented. Bigelow said she represented the West Maui Land management division. Kapu asked what day would he, Kaahui and Kirkendall be able to visit the site. Dega said Wednesday, November 23 at 9:00 am.

Kuloloio asked if the overhang was dirt to which Dillon said it was a rock overhang. Kuloloio asked if the overhang was used for burials and then walled shut to which Dillon concurred. Kuloloio asked if where the burial was found, was the exact spot the burial originally came from. Dillon believed that where the burial was found in the overhang was the original location. Kuloloio asked if the burial was found above or inside of the overhang. Dillon said the burial was found in the overhang. Kuloloio wanted to know what burial was being spoken about when Dillon mentioned a burial was exposed due to erosional waters. Dillon said he was talking about the burial in the overhang and mentioned at one time it appeared that the area had a high water mark which washed away part of the wall that sealed the overhang, exposing the burial. Kuloloio wanted Dillon stick to factual information rather than opinionated presumptions and asked Dillon to refrain from saying things that weren't clear.

Hall asked Dillon if he recalled mentioning the soil deposit to be 5-7 centimeters thick. Dillon said there was virtually no soil in the area. Hall asked if the area where the soil was scant was also the area where the burial came from to which Dillon answered yes. Hall asked if it was unlikely that all the remains of the individual were present to which Dillon concurred. Hall asked if there was any cultural material in the other two overhangs. Dillon said cultural material was found in features A and B. Dillon said the cultural material consisted mostly of basalt. Hall inquired about the depositional layers of the overhangs. Dillon said the depositional layers ranged anywhere from 30-100 centimeters between layers. Hall asked if the layers were deeper in the two overhangs than from the one which had the burial. Hall asked how much more soil was present beyond the 0.5 meter unit. Dillon said he was not sure and would need to look at a map. Dillon said if he had to guess, he would assume there would not be more than one square meter of soil. Hall suggested testing the remaining area to see what was there. Hall said it may be possible to conduct testing without dislodging the burial that was present. Hall asked if the remains originally identified were replaced back into the disturbed unit to which Dillon answered correct. Hall said additional testing needed to be conducted around the disturbed unit area to see what else may be present. Dillon felt the only testing that needed to be done was on the side of the hill. Hall suggested testing around of the disturbed area to see if there were any remains still in situ prior to Kapu's and Kaahui's site visit. Further discussion ensued and it was agreed that the additional testing would occur during the site inspection by Kaahui and Kapu.

Maxwell reminded Dillon to have more thorough and detailed maps as well as other supporting documents the next time the agenda item was brought before the council. Hall suggested Dillon start contemplating the possible interim and long term preservation measures. Dillon said the decision about preservation in place or relocation was up to the council. Maxwell said if the burial was in fact in the 100 year flood zone, suggested it may be more practical to relocate the remains to

higher grounds. Dillon thought Maxwell's suggestion was probably the best plan to preserve the burial. Dega asked if a formal motion could be made so that excavation could proceed another 50 centimeters on the subject property. Kirkendall said SHPD recommends SCS conduct further excavation in support of Hall's suggestion for additional testing.

D. BURIAL SITE IDENTIFIED AT KEAKA LLC DEVELOPMENT PARCEL, MALUAKA, HONUA'ULA, MAUI, TMK: 2-1-06:37

Information / Recommendation: Discussion of burial site identified during archaeological inventory survey.

(Both Charles Maxwell and Mei Lee Wong temporarily recused themselves from the meeting due to a conflict of interest.) Hall said she would Chair the meeting in the absence of Maxwell who conducted a cultural assessment for the agenda item project area that would be discussed. Hall mentioned Wong worked for the company developing the subject parcel and that was the reason for Wong abstaining to participate on the particular agenda item.

Lisa Rotunno-Hazuka of Archaeological Services Hawaii (ASH) LLC identified herself and passed out a map of the project area. Hazuka said ASH was continuing additional inventory procedure on the south cul de sac of the project area, adjacent to the Prince Hotel. Hazuka said the additional work was being conducted by ASH and Theresa Donham. Hazuka said during the additional work several features were being tested to determine possible functions. Hazuka said agricultural functions had been proposed for most of the features and mentioned a few features were indeterminate, suggesting possible habitation. Hazuka said the particular feature which had a burial was found in a rock platform about a course high and two courses high in other areas. Hazuka said the rock platform appeared very informal and was sort of shaped in a rectangle. Hazuka said during testing of the subject feature a long bone was discovered and determined to be a femur. Hazuka said portions of the pelvis were also identified. Hazuka mentioned upon identifying the human remains, Donham and herself notified burial council members and Kirkendall of SHPD. Hazuka said a burial notice describing the remains would be placed for public notification during the week of November 21 through November 27. Hazuka mentioned one of the reasons for placing the public notification was to see if there may be any cultural or lineal descendants.

Acting Chair, Hall called a recess due to a lack of quorum at 11:23 a.m. Hall reconvenes the meeting at 11:27 a.m.

Hazuka said the landowner was considering ways to preserve the burial in place. Hazuka said once the 30 days concludes on the decision to preserve in place or relocate the remains discovered, mentioned ASH would start preparing preservation plans to bring before the council at future meetings. Hazuka said the preservation plan would include treatment of the skeletal remains as well as long and short-term preservation measures and provide the council with an opportunity to comment and suggest recommendations.

Hall asked if there were only a few skeletal elements which had been collected during screening of excavated soil to which Hazuka answered yes. Hall asked if short-term preservation measure would include placing the skeletal elements back with the burial itself in order to allow for the reconstruction of the platform to which Hazuka answered yes. Hazuka said currently short-term preservation measures included covering the remains with soil, with a tarp place over the remains that were in situ. Hazuka mentioned the disturbed skeletal elements were being curated at ASH's office laboratory. Hazuka said ASH would like to conduct a reinterment ceremony sometime during the week of November 21-27. Hall told Hazuka she should not use the phrase "reinterment ceremony" until a preservation plan had been approved to which Hazuka acknowledged. Hazuka said ASH would try and replace the skeletal remain and rebuild the platform as a temporary means of preservation. Hazuka mentioned the burial being discussed has a State site number of 50-50-14-5706 feature 11.

Fisher moved and Kuloloio seconded, "that the council recommends the skeletal elements collected during screening of the excavation unit for site number 50-50-14-5706 feature 11 be replaced with portions of the in situ burial and that the platform be reconstructed over the burial."

VOTE: ALL IN FAVOR. The motion carried unanimously.

F. MEMORANDUM FROM SHPD ADMINISTRATOR, MELANIE CHINEN TO ALL ARCHAEOLOGICAL FIRMS DATED AUGUST 29, 2005 REGARDING ISLAND BURIAL COUNCIL MEETINGS AND COUNCIL DETERMINATIONS.

Information / Recommendation: Discussion of procedures involving acceptance of a burial treatment plan and request for council determination to preserve or relocate native Hawaiian burial sites.

Hall asked SHPD staff Farm if the subject memorandum dated August 29 had been distributed to burial council members. Farm said copies of the memorandum had been included in the previous IBC meeting packet. Hall said the memorandum to all archaeological firms dated August 29, 2005 was discussed in a meeting in October between the MLIBC Chair, Vice-Chair, SHPD Administrator Melanie Chinen and Deputy Attorney General Vince Kanemoto. Hall said there had been some concerns about the August 29 memo and the procedures that outlined the acceptance and approval of burial treatments plans as well as the placement of determinations on burial council agendas. Hall said the manner in which BTPs would be accepted by DLNR and when determinations would be placed on agendas were not clear because a number of factors had not been taken into consideration. Hall mentioned Chinen had said at the October meeting that the memorandum would be revised.

Hall said a problem with the August 29 memo was that the full citation for §13-300-33 had not been stated. Hall said the memo failed to include Hawaii Administrative Rules (HAR) in addition to §13-300-33. Hall said the August 29 memo lacked the proper citation to its authority. Hall mentioned Farm had distributed copies of a

November 16 memorandum to burial council members. Hall said the November 16 memorandum was the revised memo to the one dated August 29.

Hall said in the second paragraph of the November 16 memo where it starts, “at the time that the plan is placed on the council agenda for review and comment our Culture and History Branch staff will also review it to determine whether it contains the information required by Section 13-300-33, Hawaii Administrative Rules. We will provide you with written notification as to whether the draft plan complies with these rules.” Hall said the council needed to have some assurance that SHPD would make sure BTPs contained all the elements necessary. Hall felt a burial treatment applicant should be able to come and consult with the burial council at any time the applicant wanted as long as what was discussed pertained to burial treatment matters.

Hall began reading the last sentence of the second paragraph of the November 16 memo which states, “once the plan is placed on the agenda and notification is posted at the lieutenant governor’s office the council will have 45 days to render a determination for preservation-in-place or relocation.” Hall said the 45 day period was very important and wanted to clarify that the council renders a determination within 45 days of referral by the department. Hall said according to section 13-300-33(f) HAR, “referrals shall mean the first date that the council officially convenes following:” a number of requirements. Hall said a BTP must be accepted by SHPD, then the BTP must appear on the agenda, then the agenda must be posted at the lieutenant governor’s (LG’s) office no later than six days ahead of a scheduled meeting date. Hall said it was important to note that the 45 days starts from the first date the council officially convenes. Hall said it meant the 45 days starts from the day the council attends a meeting to consider a request for determination. Hall felt the last sentence in the second paragraph was not clear and placed the start of the 45 days at the moment a plan was placed on an agenda and posted for notification at the lieutenant governor’s office. Hall said the 45 days did not start from when an agenda was posted at the LG’s office. Hall said the 45 days starts from when the council officially convenes and not at an earlier stage of the process. Hall mentioned the last sentence in the second paragraph of the November 16 memo needed to be clarified.

Fisher asked if essentially the council had two meetings to work through an applicant’s BTP to which Hall said correct. Hall said what was being discussed was important because if a decision was not been made before the 45 days elapsed, mentioned that basically the situation would then be out of the council’s hands. Hall said when the 45 days begins was a very important point. Hall said if the 45 days started when the agenda was posted at the LG’s office at the very last moment, then the council would have 6 days less and could get into a situation where the council would not have two IBC meetings to work towards rendering a decision. Fisher asked what was meant by “out of the council’s hands.” Hall said the burial council by statute were identified as the decision makers. Hall suggested Fisher’s question be addressed to the deputy AG (attorney general). Hall did mentioned that there was an automatic approval provision in Hawaii state law. Hall said in most cases, if

a decision maker did not make a decision within the time allotted, then automatic approval would occur.

Wong asked if plans go to SHPD to ensure specific requirements were met, wanted to know if when the same plan comes before the council, did the council still possess the ability to comment and make recommendations within the plan or was the council's sole responsibility to make a decision on preservation in place or relocation of native Hawaiian remains. Hall mentioned she and Maxwell did try to speak with Chinen about what Wong had inquired because it was unclear as to how the process worked. Hall pointed out that it was unknown as to who would be reviewing the plans submitted to SHPD. Hall was concerned about the inadequate staffing of SHPD and the status of the burial sites program. Hall mentioned there had been letters dated in October with copies cc to the burial sites program. Hall said that she and Maxwell were both informally told by Chinen the burial sites program no longer exists. Maxwell said he and Hall attempted to get formal clarification as to the status of the burial sites program to which none was received. Hall said neither the IBC Chair nor the Vice-Chair had been provided with a reason or explanation for terminating the burial sites program. Hall expressed the council's concern to know who would be reviewing the BTPs and ensuring BTPs met the necessary requirements. Maxwell wanted to know who would be verifying genealogical submittals.

Hall said since the current administrator had taken over SHPD, she could think of nine people who for whatever reasons were no longer with the division. Hall mentioned the nine people who were no longer with SHPD were from all three branches of SHPD (archaeology, architecture, culture and history). Hall said prior to the nine former employees of SHPD leaving, the MLIBC had been requesting additional staffing of the burial sites program. Hall mentioned she and Maxwell were told the burial sites program no longer exists which was a major concern. Hall wanted to know who would help provide the administrative support. Hall recognized SHPD staff, Farm who did help with administrative work. Hall pointed out that Farm was strictly for clerical support and did not serve in the capacity that was in most dire need.

Maxwell mentioned Chinen was to attend today's IBC meeting but explained that due to the Big Island having its' own burial council meeting that was the reason for Chinen's absence. Maxwell said the Hawaii islands burial council meeting was also the reason Kanemoto could not attend today's burial council meeting. Hall said another concern for the termination of the burial sites program was because all the collective knowledge and expertise of how the burials sites program was run since 1991 was gone with the exception of Keola Lindsey of Hawaii Island. Hall said the only people left who had knowledge on how burials were dealt with and how the burial sites program worked, were those members of the burial councils who had served for a long time. Hall felt the new people of SHPD did not have the necessary experience or framework to be properly trained because no one was left within the division to train new staff.

Hall said the second sentence in the third paragraph of the November 16, memo which read, "in accordance with Chapter 6E-43(d), HRS, the department will approve the burial treatment plan within 90 days of a determination of preservation in-place or relocation" was an incorrect statement. Hall asked Kapu to read what was written for Chapter 6E-43(d) HRS because he had his folder which contained the statutes for Chapter 6E. Kapu read, "within 90 days following the final determination, a preservation or mitigation plan shall be approved by the department in consultation with any lineal descendants, the respective council, other appropriate Hawaiian organizations, and any affected property owner." Hall said "within 90 days following the final determination, a preservation or mitigation plan shall be approved by the department." Hall said the November 16 memo reads "in accordance with Chapter 6E-43(d), HRS, the department will approve the burial treatment plan within 90 days of a determination of preservation in-place or relocation." Hall said the wrong plan was mentioned in the memo because the BTP would be accepted ahead of a determination. Hall said once the BTP was accepted, then the BTP would come before the council with a proposal for a determination of preservation in-place or relocation. Hall said if the council determined preservation in-place, a preservation plan would be developed within 90 days of the determination. Hall said if the council determined relocation, then a mitigation plan would be developed within 90 days of the determination. Hall said the memorandum misdirected all archaeological firms in terms of what the statute said. Hall said the error was not a small matter.

Fisher asked if the council should make a recommendation to revise the November 16 memorandum. Maxwell agreed with Fisher and said a motion needed to be made to clarify the mistake that was made. Hall said different plans occurred at different points of the process. Kuloloio felt the misuse of citing Chapter 6E-43(d), HRS, would cause more confusion and problems in the future if the mistake was not corrected. Hall felt a letter needed to be written to the administrator of SHPD offering to work closer together and to be able to discuss procedures and ways of dealing with burial issues. Hall said SHPD needed to have some fashion of being able to recognize when applicable, cultural and lineal descendants in a timely manner so the descendants would be able to participate the development of a BTP. Hall said there needed to be a close working relationship between SHPD and the council to ensure all necessary elements had been met prior to placing a BTP on the agenda. Maxwell suggested a motion be made to the effect of what Hall had just mentioned.

Fisher asked how did lineal descendants factor into a BTP. Hall said any recognized cultural or lineal descendants must be consulted with during the development of the BTP to gain the descendant's position on preservation in-place or relocation. Hall said there would be newspaper notification which had a 30 day period that would need to elapse among other elements that needed to be involved with the process of developing a BTP. Fisher said SHPD needed a burial sites person to evaluate the validity of a person's claim to be a lineal or cultural descendant to which Hall agreed.

Hall said the SHPD staff was shrinking although she did recognize the hiring of some clerical support as well as other recent hires. Hall said the staff that remained with SHPD had much more responsibility to cover and as a result mentioned there

was no humanly possible way for the existing staff to address the current workload. Hall said staffing shortage was a problem with SHPD a year ago when SHPD Administrator Chinen came aboard. Hall SHPD had had inadequate staffing for a while and mentioned the MLIBC had advocated for more staffing of the burial sites program due to the direct interaction the burial sites program had with the burial council. Hall said instead of acquiring more staff for SHPD, what had happened was a reduction of staff instead. Hall thought SHPD lost some very good people with whom the council had worked with for many years. Maxwell mentioned he had been in contact with Chinen discussing staffing issues.

Kuloloio said since the burial council was formed, SHPD had lost critical staff and staffing positions. Kuloloio expressed his concern about staffing inadequacies and wanted the issue to be addressed. Maxwell mentioned that SHPD had its recent request for additional staff turned down. Maxwell said there was poor communication between SHPD and the MLIBC. Kuloloio said if SHPD continues to deteriorate and ultimately cease to exist, felt that native Hawaiians throughout the state would have an uproar and outcry that the state would not want on its' hands. Maxwell said the burial council could not let the situation reach the point made by Kuloloio. Kuloloio just wanted to point out the possible repercussions that could occur if SHPD totally fell apart. Maxwell said there were many issues occurring that could not be discussed.

Paoa said SHPD was not following the correct interpretation that was mentioned in the November 16 memo. Hall said the issue was not an incorrect interpretation, the issue was an incorrect citation. Paoa asked if by making a recommendation to address the incorrect citation, wanted to know if the council even had the authority to bring forth such concerns to Chinen. Hall and Maxwell felt the council had to address the concerns that were being discussed. Paoa said maybe the staffing inadequacy was the result of SHPD's lack of funding. Maxwell said that could be one of many reasons. Hall thought the council had tried to be as supportive as possible, but thought the situation had finally reached a point where the flow of information only went one way. Hall thought SHPD needed better and open lines of communication. Hall said the council and even SHPD staff had no idea of what was happening or who was being hired until it was read about in the newspaper. Paoa asked if SHPD sends out any type of notification informing others of what was going on and who was being hired to which Hall said no.

Kapu said the council should draft a letter to SHPD requesting assistance on how to handle claims submitted by cultural and lineal descendants and wanted to know to which branch within the division particular matters should go. Maxwell said it was his understanding that for the time being, all matters pertaining to genealogy would be contracted out of SHPD. Kapu wanted to know if a program exists within SHPD that would even permit the burial council direct consultation and interaction with the division. Hall said if a letter was sent to SHPD it would need to question whether or not the burial sites program still exists and if it does not, why the program did not exist. Hall said if in fact the burial sites program did not exist she wanted to know what was the administrative support that was being provided in its' place. Hall said the letter would also need to point out the incorrect citation of Chapter 6E-43(d),

HRS. Hall thought the letter that would be drafted should have copies sent to the other burial councils as well as to Peter Young.

Hall moved and Kapu seconded, “that the Maui / Lanai Islands Burial Council authorizes the Vice-Chair to send a letter to the SHPD Administrator, Melanie Chinen with copies of this letter to the Hawaii Island Burial Council, the Oahu Island Burial Council, the Molokai Island Burial Council, the Kauai / Niihau Islands Burial Council, as well as SHPD staff Sunny Greer, Keola Lindsey, Piilani Chang and Melissa Kirkendall. The letter shall address an incorrect citation to Chapter 6E-43 (d) HRS as well as concerns of the council regarding the termination of the burial sites program.”

VOTE: ALL IN FAVOR. The motion carried unanimously.

E. PROPOSED LEGISLATION AFFECTING CHAPTER 6E-43, HAWAII REVISED STATUTES

Information / Recommendation: Discussion on administrative proposal to amend Chapter 6E-43.

Hall and the MLIBC Chair informed council members that they had met with SHPD Administrator, Melanie Chinen in October to discuss the August 29 memorandum and ultimately canceled the October meeting. Hall said at the meeting in October the Vice-Chair and Chair had asked Chinen to provide them with copies of any bills or proposals that may go to legislature affecting Chapter 6E. Hall said Chinen had brought some copies of draft legislation that raised immediate concerns from the Chair and Vice-Chair. Hall said all burial councils had the right to review any proposed changes affecting Chapter 6E that may go to the legislature well in advance. As a result the Chair and Vice-Chair asked for a meeting of all burial council Chairs and Vice-Chairs to discuss the proposed legislative changes. Hall thought the meeting would also be a good time to discuss staffing issues and notification to the council of previously identified and inadvertent burials as well as the issues contained within the August 29 memorandum.

Hall said a meeting was arranged for November 7 but a problem which arose was SHPD did not schedule the meeting on a date that all the council Chairs and Vice-Chairs could be present. Hall said she and Maxwell did not find out that the Hawaii Island Burial Council Chair would not be attending the November 7 meeting until the day before the meeting. Hall said none of the council Chairs or Vice-Chairs knew that the Kauai / Niihau Vice-Chair was not going to attend the meeting. At the November 7 meeting Hall said a council member in place of the Hawaii IBC Chair attended whose name was Dutchy Saffery. Hall said others in attendance at the November 7 meeting besides herself and Maxwell for Maui / Lanai included the Vice-Chair of Hawaii Islands, Chair Jace McQuivey and Vice-Chair Kawika McKeague for Oahu, Chair La France Kapake-Arboleda for Kauai / Niihau and no one from Molokai because the council did not have a sufficient amount of members to hold meetings.

Maxwell said at the November 7 meeting, it was discovered that the Oahu burial council could not convene because it lacked the required amount of members to hold a meeting. Maxwell mentioned he had recommended three people from Molokai to serve on the burial council. Hall said at the November 7 meeting the Chairs and Vice-Chairs were basically informed that Chinen did not want to discuss staffing issues or notification issues. Maxwell mentioned he was informed Chinen was sick and that was the reason for Chinen's absence at the November 7 meeting. Maxwell said everyone had to wait an hour before the meeting could start because no one knew how to use the equipment to record the meeting. Maxwell said at the meeting he used his *kupuna* status to find out who SHPD staff Sunny Greer was. Hall said Greer was apparently the director of cultural programs to which no one knew what that meant. Hall said that those attending the meeting were starting to understand that all burial sites matter went directly to Greer who would be making the determination for SHPD in consultation with Chinen on inadvertent burials. Hall said she and Maxwell wanted to know who Greer was and what sort of qualifications she had.

Hall said the proposed amendments to Chapter 6E-43 were fashioned by Chinen, Greer and Kanemoto. Hall said the statute in place had been operating fairly well since 1991. Hall said the council should be concerned when all three people who were involved in proposing amendments to Chapter 6E-43 were all new with respect to dealing with burial issues. Hall said at the meeting each proposed change was discussed. Hall said after discussing each proposed change, there was a consensus among everyone present that each proposed change was not necessary. Hall mentioned there was one particular change that Kanemoto felt was necessary. Hall mentioned the Chairs and Vice-Chairs did not agree with Kanemoto.

Hall said SHPD and the burial councils were dealing with some high profile cases in particular the Wal-Mart case in which a fine was being asked to be levied in the amount of \$210,000. Hall said Hawaii Island had Alii highway which was another very controversial case as well as Hokulia. Hall said given the high profile cases, if a bill was introduced to the legislature to amend Chapter 6E-43, the legislative process would then take over. Hall said that would then create a vehicle for anyone to become involved and propose amendments to Chapter 6E-43. Hall said bills had been known to morph dramatically once it reached the legislature. Hall said even though bills may start with good intentions, in the end the same bill could be completely unrecognizable usually as a result of being taken over by more powerful interests. Hall said if a bill was proposed to the legislature, amendments could very well be made that would not be in the interest to the council and the *iwi kupuna*. Hall said a fight against a rear guard action to protect the statute could very well happen. Hall said the Chairs and Vice-Chairs made it clear that they were not convinced of any proposed amendments to Chapter 6E-43 nor the submittal of a bill to the 2006 legislative session. Hall said the potential downside likely outweighed any benefits of the proposed amendments or bills. Hall felt any proposed changes should be brought before all burial councils early to give council members the opportunity to be fully engaged in discussions as to whether or not the law should be amended and in what fashion.

Maxwell said Peter Young had mentioned it would help him (Young) if a motion was made specifying the council's opposition to any proposed amendments to Chapter 6E-43. Hall suggested with the MLIBC's approval to make a motion to draft a letter to Peter Young addressing the council's particular concerns. Currently Hall would not feel comfortable with SHPD Administrator, Chinen going and defending Chapter 6E-43 while being peppered with questions from the legislature and possible inquiries as to whether or not SHPD was living up to its' responsibilities. Hall reiterated her desire to have the burial councils consulted whenever changes were being proposed. Hall felt the department, the division and the burial council were not together enough to be able to go to the legislature and defend Chapter 6E-43 especially with the lack of communication which currently existed.

Fisher asked what some of the more serious and dramatic changes proposed were. Hall said currently 20% of the representatives of the island burial council members must be appointed from a list provided by OHA (Office of Hawaiian Affairs). Hall said one of the proposed amendments stated OHA would only be given 60 days to submit a list of possible council members. Hall said if OHA did not provide a list within the 60 days, the department would then be able to choose exclusively who the department wanted on a council. Hall said she interprets the particular proposal as taking power away from OHA and investing the power within the department. Hall felt it was important that SHPD work with OHA. Hall said another proposal sought to amend the statute so that instead of having 20% of each council represented by a list from OHA, the proposed amendment would allow the department if the department wanted to, to comprise all or most of the 20% into one council. Hall said that would essentially allow the department the ability to choose and build other councils as the department wanted.

Kuloloio moved and Kapu seconded, "that a letter [be sent] to Peter Young with a copy to Melanie Chinen stating the council's opposition to any legislation by the administration to amend Chapter 6E-43, Hawaii Revised Statutes and providing some of the reasons for why the council opposes any amendments with copies to the other burial councils."

VOTE: ALL IN FAVOR. The motion carried unanimously.

G. CASE UPDATES / OTHER INADVERTENT DISCOVERIES
Information / Recommendation:

Status Update on Return of Human Skeletal Remains Taken from Kaanapali Burial Site, Lahaina District, Island of Maui.

(MLIBC Chair, Maxwell exits the meeting at 12.40 p.m. Hall assumes Chairing the meeting.)

Hall said she and Maxwell met with Don Reaser the manager at Whalers Village who was in contact with the new owners, who purchased the property from Campbell Estate. Hall said an area immediately adjacent to the shoreline setback at Whalers Village was asked for as the preservation area for reinterment of the ebay

poo. Hall mentioned a pedestrian path was adjacent to the area that was being asked for as the reinterment location. Hall said the area *mauka* of the pedestrian path was sought which was also an area that would accommodate very little construction. Hall mentioned a 4' X 4' platform with a 2 foot vegetative buffer around the platform was also asked for. Hall said the *poo* was in the Maui historic preservation office under the care of Kirkendall and Farm and a response on whether or not the preservation area could be accommodated was where the issue currently stood. Hall said the council would be informed on when the reinterment ceremony would be conducted.

Status Update on Recent Inadvertent Burial Discovery at Schuler Homes at Maui Lani, Wailuku Ahupuaa, Wailuku District, Island of Maui, TMK: 3-8-7:POR of 131.

Lisa Rotunno-Hazuka of Archaeological Services Hawaii passed out a map and a burial registration form and identified herself. Hazuka said the burial was an inadvertent discovery. Hazuka said the human skeletal remains were identified during monitoring while heavy equipment was cutting and filling the area. Hazuka said the remains were pushed by heavy equipment. Hazuka said the push was about 40-60 foot long. Hazuka said once the burial was discovered, all work was stopped and yellow caution taped was used to mark off the area. Hazuka said all the human remains on the surface were mapped and that the surface sand was screened for the possibility of having additional remains. Hazuka said ASH tried to identify concentrated areas which could be indicative of having an in situ portion of the burial. Hazuka said no in situ components were found. Hazuka said three test units had been conducted within the 10 foot by 40 foot area and mentioned ASH was still collecting more skeletal remains. Hazuka said ASH would continue screening to recover missing portions of the burial.

Hazuka said 7.1 was a phase at Schuler homes that was completed two years ago. Hazuka mentioned no finds were discovered in 7.1. Hazuka said grading was done near the border line of 7.1 and 7.2 and mentioned a burial was found at 7.2 which was marked in orange on the map that was passed out. Hazuka said the burial at 7.2 was intact but also mentioned some remains were pushed out. Hazuka said the landowner had given up a residential lot at 7.2 to create a preservation area. Hazuka said currently there was one in situ burial on the lot at 7.2. Hazuka said the burial found in 7.3 was believed to have originated from two lots near Kamehameha Avenue which was marked in yellow. Hazuka mentioned there was a landscaping strip marked in orange on the map that was passed out which could possibly be used as a preservation area. Hazuka said the landowner was asking that the current preservation area at 7.2 be used as the reinterment location for the remains found at 7.3. Hazuka said the landscaping strip was around 5 foot wide and would have a fence along Kamehameha Avenue. Hazuka said the landscaping would occur between the fence and Kamehameha Avenue.

Hall said it would not be a good idea to reinter the burial in the proposed landscaping area because Kamehameha Avenue could be widened in the future. Fisher wanted to know if the developer felt comfortable creating one preservation area, why wouldn't the developer feel comfortable creating another preservation area. Fisher

said there were a lot of house lots that could be used as a second preservation area and expressed that 7.3 should have its own preservation area since there was a likelihood of finding more burials in the future. Hazuka said she would ask the landowner about creating a second preservation area. Kaahui asked how big was the proposed lot that would be the preservation area at 7.2 to which Hazuka answered was about 8,000 square feet.

Given the size of the development, Kapu thought there should be a mass preservation area or a preservation area in each phase of the development. Kapu thought that the burials should have the respect of being preserved as close as possible to where they were or may be found. Kuloloio agreed with Kapu and felt that if a burial could not be preserved in place, then the burial should be given the respect of being preserved as close as possible to where it was found. The council felt that there were more than enough lots for the landowner to give up one or two more lots which could become preservation areas.

Hall said the burial council had always tried to preserve the integrity of burials and to as much as possible, preserve a burial in place. Hall thought that just because a burial was disturbed and it may be more convenient to have the burial relocated, did not mean that was what should be done. Hall felt the integrity of the burials should always come first. Hall said what the council was trying to maintain was the old pattern established by the burials by preserving a burial, if not in-place, then as close as possible to where the burial came from. Hazuka said she understood the council's position and reasons for wanting to preserve burials in-place or as close as possible to where a burial came from. Of all the burial councils throughout the state, Hall thought the MLIBC probably preserved the most burials in place in regard to inadvertent remains. Hall said the MLIBC had been so adamant to preserve burials in place that although SHPD made the final determination, she was unaware of any situation where the division had gone against the council's recommendation.

Status Update on Inadvertent Burial Discovery at Waiehu Beach Park, Wailuku Ahupuaa, Wailuku District, Island of Maui, TMK: 3-2-13:025; Status Update on Implementation of Interim and Long-Term Preservation Measures in Burial Preservation Plan for Site 4142, Honolua, Lahaina District, Maui, TMK: 4-2-004:031; Status Update on Burial Site Identified on Lefevre Property, Niumalu Ahupuaa, Hana District, Island of Maui, TMK: 1-7-3:16.

Hall said there were no representatives present for any of the remaining agenda items and as a result would delay discussion of those items until a future meeting.

IV. ANNOUNCEMENTS

None

V. ADJOURNMENT

Kuloloio moved and Paoa seconded, "to adjourn the MLIBC meeting."

VOTE: ALL IN FAVOR. The motion carried unanimously.

Respectfully Submitted,

Kawika Farm
Clerk Stenographer II
State Historic Preservation Division